

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Knox

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FILE: B-211874

DATE: September 2, 1983

MATTER OF: Fairfax Hospital Association

DIGEST:

1. Where responses to notice of intended small business set-aside and agency investigation indicate that adequate competition on set-aside will be obtained at reasonable prices, protest that agency improperly decided to set procurement aside is denied.
2. Procurement for alcohol and drug abuse prevention services may be set aside for small business as statutes encouraging agencies to establish such programs do not exclude procurements for such services from Small Business Act requirements.

Fairfax Hospital Association, a non-profit institution, protests the issuance of solicitation No. DTOS59-83-R-00045 as a total small business set-aside by the Department of Transportation. Fairfax contends that the set-aside unduly restricts competition. We deny the protest.

The solicitation for an employee counseling assistance program was synopsized in the Commerce Business Daily on May 3, 1983. The agency reports that it received 27 requests for copies of the solicitation, at least 5 of which were from firms that identified themselves as small businesses. The agency also states that it conducted a survey of similar programs at other agencies and identified seven other small business firms that are capable of providing the required services.

Fairfax contends that the set-aside restricts competition by excluding potential bidders and diminishes the likelihood of obtaining the counseling services at a reasonable price because only a limited number of small businesses offer this type of service. Fairfax argues that the set-aside is detrimental to the public interest because it will result in a significant increase in procurement costs to the Government and is contrary to Congressional policy to provide Government employees with high quality alcohol and drug abuse prevention service.

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The agency states that it expects to receive bids at reasonable prices from a number of small businesses that are capable of providing the required services. Moreover, it argues that based on this expectation, it acted within its authority in deciding to set the procurement aside for small business participation. We agree.

The Federal Procurement Regulations (FPR), implementing the Small Business Act, 15 U.S.C. § 631, 644(e) (Supp. IV 1980), provide that procurements shall be set aside for small business where there exists "a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible * * * concerns so that awards will be made at reasonable prices." See FPR § 1-1.706-5. The decision as to whether such expectations exist is primarily a business judgment within the discretion of contracting officials; consequently, our review of challenges to such set-aside decisions is limited to considering whether there has been an abuse of this broad discretion. See Ingersoll-Rand, B-207005, April 12, 1982, 82-1 CPD 338. While not disputing the agency's statement that it has received expressions of interest from many firms including several small businesses, Fairfax contends that most of these responding firms are located outside the Washington area and thus are not capable of performing these services properly. Since the agency has not indicated that this procurement is to be limited to local firms we do not believe that the protester has presented any evidence that the agency's expectation of sufficient competition was unreasonable.

Fairfax does argue that it should be able to compete here since it can furnish a better service at lower prices than will be received from a small business concern and that this proposed set aside is contrary to Congressional policy. The Government, however, may pay a premium price to small business firms on restricted procurements in order to implement the purposes of the Small Business Act. See Ling/L.A.B., a subsidiary of Mechanical Technology, Inc., B-207414, October 15, 1982, 82-2 CPD 341. The relative quality of Fairfax's service also has no bearing on the propriety of the agency's set-aside decision. The only relevant consideration in this respect is whether the agency reasonably anticipated the receipt of bids from responsible firms, i.e., firms capable of performing in accordance with the specifications.

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Finally, while it is true that the Congress has encouraged Federal agencies to provide its employees with alcohol and drug abuse prevention services, see 42 U.S.C. § 4561 (1976) and 21 U.S.C. § 1180 (1976), there is nothing in the cited statutes stating that agencies are to ignore the mandate of the Small Business Act in procurements conducted for these services. Thus, the agency acted properly here in applying the regulations pertaining to small business set asides.

We deny the protest.

for *Harry R. Van Cleave*
Comptroller General
of the United States